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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

LUONG, VINH

ART UNIT PAPER NUMBER

3682

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/750,662

Applicant(s)

CHA, JOON-GEUN

Examiner

Vinh T. Luong

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


Vinh T. Luong
Primary Examiner

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/21/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. The Amendment filed on November 4, 2005 has been entered.
2. The abstract of the disclosure is objected to because the abstract uses the form and legal phraseology often used in patent claims, such as "means."
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Takahashi (Japanese Utility Model 2002-67899 cited by Applicant).

Takahashi teaches a brake pedal assembly for a vehicle, comprising:

- a dash bracket 7(7) configured to be fixed to a dash panel 4a;
 - a cowl bracket 4b configured to be fixed to a cowl cross member 13;
 - a hinge supporting part S formed between said dash bracket 7(7) and said cowl bracket 4b for pivotally supporting a brake pedal hinge 23; and
- hinge releasing means A placed between said dash bracket 7(7) and said cowl bracket 4b for releasing said hinge supporting part S from a restrictive state when said dash bracket 7(7) moves relatively in relation to said cowl bracket 4b. See English abstract.

5. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Tiemann et al. (US Patent No. 6,101,894).

Regarding claim 1, Tiemann teaches a brake pedal assembly for a vehicle, comprising:

- a dash bracket 10 configured to be fixed to a dash panel 9;
- a cowl bracket 3 configured to be fixed to a cowl cross member 8;
- a hinge supporting part 15 formed between said dash bracket 10 and said cowl bracket 3 for pivotally supporting a brake pedal hinge 2; and

hinge releasing means 15 placed between said dash bracket 10 and said cowl bracket 3 for releasing said hinge supporting part 15 from a restrictive state when said dash bracket 10 moves relatively in relation to said cowl bracket 3.

Regarding claim 2, said hinge releasing means is composed of two linear sliding sides 15 (i.e., two sides of the U-shaped, upward opening bearing recess 15) formed to face each other between said dash bracket 10 and said cowl bracket 3 and to be inclined in relation to a moving direction of said dash bracket 10 during a collision.

6. Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

8. Applicant's arguments filed November 4, 2005 have been fully considered but they are not persuasive.

TAKAHASHI

At the outset, Applicant contended:

As to the rejection of claim 1 under Takahashi, the element 4b that the Examiner cited as allegedly being *identical* to the cowl bracket 17 of the present invention appears to refer to a surface or edge of the brake pedal bracket 4, not a separate bracket. Assuming for the sake of argument that element 4b is a bracket, it is integrally formed with element 7(7), which is itself a portion of brake pedal bracket 4; that is, only one bracket, the brake pedal bracket 4, exists in Takahashi (see abstract). In addition, hinge releasing means A is integrally formed with the brake pedal bracket 4. *In contrast, claim 1 of the instant application contains*

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the limitation that the hinge releasing means is placed between the dash bracket and the cowl bracket, which inherently states that the brackets are not integrally formed with one another. Because three elements of the present invention (dash bracket 13, cowl bracket 17, and hinge releasing means 23, 24, 25) compose a single element in Takahashi, Takahashi does not disclose a hinge supporting part formed between the dash bracket and the cowl bracket nor a hinge releasing means placed between the dash bracket and the cowl bracket. These limitations are both in claim 1 of the instant application, and therefore it and its dependents are patentable over Takahashi. (Emphasis added).

First, Applicant's arguments are unsupported by substantial evidence in the record. In the Office action on August 3, 2005, the Examiner did not allege that the element 4b of Takahashi is *identical* to the cowl bracket 17 of the invention. The anticipation law does not require the Examiner to find "identical" element in the prior art in comparison to the claimed element. In fact, it is well settled that anticipation law requires distinction be made between invention described or taught and invention claimed. It does not require that the reference "teach" what subject patent application teaches, it is only necessary that the claim under attack, as construed by the Court, "*read on*" something disclosed in the reference, *i.e.*, all limitations of the claim are found in reference, or are "*fully met*" by it. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781, 789 (CAFC 1983). The Examiner hereby clarifies that the element 4b of Takahashi "*reads on*" Applicant's cowl bracket 17.

On the other hand, as noted in MPEP 2111, during patent examination, *claims are given their broadest reasonable interpretation consistent with the specification.* It is proper to use the specification to interpret what the applicant meant by a word or phrase recited in the claim. However, *it is not proper to read limitations appearing in the specification into the claim when these limitations are not recited in the claim.* See *In re Paulsen*, 30 F.3d 1475, 1480, 31

USPQ2d 1671, 1674 (Fed. Cir. 1994); and *Intervet America Inc. v. Kee-Vet Lab. Inc.*, 887 F.2d 1050, 1053, 12 USPQ2d 1474, 1476 (Fed. Cir. 1989). (Emphasis added).

In the instant case, Applicant's claim 1 does *not* specifically require the dash bracket and the cowl bracket being formed separately. In other words, claim 1 does not preclude the embodiment wherein the brackets are formed as one piece. On the one hand, it is noteworthy that Applicant's Priority Document Korea 10-2003-0070555 shows that Applicant's dash and cowl brackets are apparently formed as one piece. On the other hand, the mere fact that the hinge releasing means is placed between the brackets, does not *inherently* result that the brackets are not *integrally* formed with one another. In fact, assuming *arguendo* that Applicant's brackets are formed as one piece, one still can form the hinge releasing means between the brackets by, *e.g.*, cutting or drilling the Applicant's one-piece formed dash and cowl bracket to form the groove 29 and slides 23 and 24.

With respect to Applicant's *inherency* arguments, note that "To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). See MPEP 2112.

In the instant case, Applicant has not shown that if the hinge releasing means is placed between the brackets, the brackets *must not* be integrally formed with one another. On the other hand, it is well settled that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. See *In re Hotte*, 177 USPQ 326 (CCPA); *In re*

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Clark, 102 USPQ 241 (CCPA); *In re Dike*, 157 USPQ 581 (CCPA); *In re Kohno*, 157 USPQ 275 (CCPA); and *In re Morris*, 43 USPQ2d 1753, 1757 (CAFC 1997). Therefore, based on legal precedents, Applicant's brackets 13 and 17 are *integrally* formed with one another even though they are not formed as a single piece. In other words, Applicant's allegation in the Amendment and Response *after the filing date* that Applicant's brackets 13 and 17 are *not* integrally formed with one another is not in accordance with law.

Returning to Takahashi, since Applicant's claim 1 does not preclude the brackets being formed as one piece, *a fortiori*, Takahashi's brackets 7(7) and 4b "read on" Applicant's claimed brackets. In addition, Takahashi does disclose a hinge supporting part S formed between the brackets 7(7) and 4b as shown in Figs. 1-8 and explicitly described in its English abstract. Each limitation in claim 1 of the instant application is "fully met" by Takahashi, and therefore, said claim is unpatentable over Takahashi.

TIEMANN

In the same vein of arguments, Applicant contended:

As to the rejection of claims 1 and 2 under Tiemann, the Examiner cited inclined surface 10 as allegedly anticipating the dash bracket 13 of the present invention, and bearing recess 15 as allegedly anticipating both the hinge supporting part 19 and the hinge releasing means 23, 24, 25 of the present invention. Bearing recess 15 is disclosed as existing in each of the legs 12 and 13 of the bearing support 3 (column 4 lines 10-12 and lines 5-6); that is, *it is formed entirely in the cowl bracket, and is nowhere disclosed as being formed in or adjacent to the inclined surface 10 or any other element which could be construed as anticipating the dash bracket of the present invention.* In addition, *bearing recess 15 is not a hinge releasing means* as it, itself is hingably connected to pedal shaft 2. The hinge is released by inclined surface 10 of lifting element 4 (column 4, lines 28-30), not by bearing recess 15. *The hinge supporting part 15 is formed only on the cowl bracket 3, and not on, the dash bracket, and the hinge releasing means 10 is*

formed only on the dash bracket. In contrast, claim 1 of the instant application includes the limitations that a hinge supporting part is formed between the dash bracket and the cowl bracket and the hinge releasing means is placed between the dash bracket and the cowl bracket. Therefore, claim 1 and its dependents are patentable over Tiemann. (Emphasis added).

First, it is noteworthy to point out that Tiemann (US Patent No. 6,101,894) is equivalent to DE 297 13 799 U1 used by German Patent Office to reject Applicant's claims. See Applicant's IDS filed on October 21, 2005.

Second, Applicant apparently uses an "*ipsissimis verbis*" test that requires the same terminology in the art in order to find anticipation. See footnote 11 of *AKZO N.V. v. International Trade Commission*, 1 USPQ2d 1241, 1245 (CAFC 1986). It is well settled that an inventor can be his/her own lexicographer. Thus, Tiemann does not need to use the same terminology as Applicant uses. More importantly, it is well settled that an anticipatory reference needs not duplicate word for word what is in the claims. Anticipation can occur when a claimed limitation is "inherent" or otherwise implicit in the relevant reference. *Standard Haven Products Inc. v. Gencor Industries, Inc.*, 21 USPQ2d 1321, 1328 (Fed. Cir. 1991).

In the instant case, albeit Tiemann's bearing recess 15 is formed entirely in the cowl bracket 3, this recess 15 is between the dash bracket 10 and the cowl bracket 3 as seen in Fig. 1. Moreover, it is *adjacent* to the inclined surface 10 which could be construed as corresponding to the dash bracket of the present invention. In addition, albeit Tiemann's bearing recess 15 itself is hingably connected to pedal shaft 2, it is a hinge releasing means because: (a) it is located/placed between the dash bracket 10 and the cowl bracket 3; and (b) it is used for releasing said hinge supporting part 15 from a restrictive state when said dash bracket 10 moves relatively in relation to said cowl bracket 3 *as recited in Applicant's claim 1*. See Tiemann's abstract and claims 1-7.

Third, note that Paragraph [0011] of Applicant's specification discloses "[t]he hinge release means includes two linear sliding sides 23, 24 and a ball 25, wherein the linear sliding sides 23 and 24 are formed to face each other between the dash bracket 13 and cowl bracket 17 and to be inclined in relation to a moving direction of the dash bracket 13 during a collision, and the ball 25 is inserted between the two linear sliding sides 23 and 24." In the instant case, two sides of the recess 15 form Tiemann's sliding slides, meanwhile, the pedal shaft 2 is fully equivalent to Applicant's ball 25 and hinge 21. Therefore, Tiemann's recess 15 and shaft 2 "fully meet" Applicant's means-plus-function "hinge release means" as described in Applicant's specification.

For the above reason, the rejection of claim 1 based on Tiemann is maintained.

With respect to claim 2, Applicant averred that Tiemann does not anticipate the hinge release means because Tiemann's recess 15 having two sides formed on the cowl bracket and not between the dash bracket and cowl bracket.

Tiemann's recess is formed on the cowl bracket 3. However, the cowl bracket 3 has an upper portion at 14 in Fig. 1 and a lower portion at 15 in Fig. 1. Since the recess 15 is formed at the lower portion, therefore, the recess 15 is between the upper portion of the cowl bracket 3 and the dash bracket 10. Applicant's claim 2 does not preclude the dash bracket, the cowl bracket, and the hinge release means to be separately formed from each other. Hence, two sides of Tiemann's recess 15 "read on" Applicant's claimed limitation "two linear sliding side formed to face each other between said dash bracket and said cowl bracket."

For the foregoing reasons, the rejection of claim 2 is likewise maintained.

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9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Luong

January 3, 2006



Vinh T. Luong
Primary Examiner